No. 2636

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

Names and Addresses of Attorneys of Record.

FRANCIS A. GARRECHT, Esquire, United States District Attorney, Federal Building, Spokane, Washington,

M. C. LIST, Esquire, Special Attorney, Washington, D. C.,

Attorneys for Plaintiff and Plaintiff in Error,

and

CHARLES S. ALBERT, Esquire, Great Northern Passenger Station, Spokane, Washington,

THOMAS BALMER, Esquire, Great Northern Passenger Station, Spokane, Washington,

Attorneys for Defendant and Defendant in Error.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,

Defendant.

Complaint.

Now comes the United States of America, by Francis A. Garrecht, United States Attorney for the Eastern District of Washington, and brings this action on behalf of the United States against the

Great Northern Railway Company, a corporation organized and doing business under the laws of the State of Minnesota, and having an office and place of business at Merritt, in the State of Washington; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

FOR A FIRST CAUSE OF ACTION,

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the Act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, Page 85), and as amended by Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 9, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1918; said train being run over a part of a through highway of interstate commerce, and being [1*] then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel in the State of Washington, to Merritt, in said State, within the jurisdiction

*Page-number appearing at foot of page of original certified Record.

of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power of train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A SECOND CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 11, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1900; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within [2] the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A THIRD CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 13, 1914, ran on its line of railroad its certain freight train, known

as No. 402, drawn by its own locomotive engine No. 1910; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand.-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of [3] said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A FOURTH CAUSE OF ACTION,

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington .

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Stat-

utes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 14, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1917; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended. [4]

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A FIFTH CAUSE OF ACTION,

plaintiff alleges that defendant is, and was during

all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 15, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1918; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, de-

fendant is liable to plaintiff in the sum of one hundred dollars [5]

FOR A SIXTH CAUSE OF ACTION,

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 16, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1911; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not con-

trolled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A SEVENTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington. **[6]**

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 17, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1907; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the

jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR AN EIGHTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), [7] and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 18, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1912; said train being run over a part of a through highway of interstate commerce, and being

then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A NINTH CAUSE OF ACTION,

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March

2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 18, 1914, ran on its line of railroad its certain freight train, known as Extra East, drawn by its own locomotive engine No. 1904; said train being run [8] over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR A TENTH CAUSE OF ACTION,

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the

act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 20, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1921; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade **[9]** Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

FOR AN ELEVENTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all

the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 21, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1904; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common [10] hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defen-

dant is liable to plaintiff in the sum of one hundred dollars.

FOR A TWELFTH CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington.

Plaintiff further alleges that in violation of the act of Congress, known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), said defendant, on July 22, 1914, ran on its line of railroad its certain freight train, known as No. 402, drawn by its own locomotive engine No. 1901; said train being run over a part of a through highway of interstate commerce, and being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that on said date said defendant ran said train as aforesaid over its line of railroad from Cascade Tunnel, in the State of Washington, to Merritt, in said State, within the jurisdiction of this court, when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section

1 of the aforesaid act of March 2, 1893, as [11] amended.

Plaintiff further alleges that by reason of the violation of the said act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

WHEREFORE, plaintiff prays judgment against said defendant in the sum of twelve hundred dollars, and its costs herein expended.

(Signed) FRANCIS A. GARRECHT,
United States Attorney.

[Endorsements]: Complaint. Filed December 18, 1914. W. H. Hare, Clerk. By S. M. Russell, Deputy. [12]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation,
Defendant.

Demurrer.

The above-named defendant now comes into court appearing by its attorneys, Charles S. Albert and Thomas Balmer, and says that the said complaint and each and every cause of action in said complaint and the matters therein contained, in the manner and

form as the same are therein stated and set forth, are not sufficient in law, and the said defendant is not bound by the law of the land to answer the same, and that this, said defendant is ready to verify.

WHEREFORE, the said defendant prays judgment that the said defendant be dismissed and discharged from the said premises in said complaint specified.

Said demurrer is based upon the following grounds:

1. That neither the said complaint nor any cause of action set forth in said complaint, states sufficient facts or grounds constituting an offense against the United States or any offense.

2. That neither said complaint nor any cause of action therein attempted to be set forth, states facts sufficient to constitute a cause or causes of action against the said defendant.

3. That the facts stated in said complaint and each and every cause of action therein set forth, do not state sufficient grounds constituting an offense against the United States or any offense, nor do they state any cause of action under the act of Congress entitled, "An Act to promote the safety of employees and [13] travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes and for other purposes," approved March 2d, 1893, as amended April 1st, 1896, as amended March

2d, 1903, and as amended April 14th, 1910.

(Signed) CHARLES S. ALBERT,
THOMAS BALMER,
Attorneys for Defendant.

[Endorsements]: Due service of the within Demurrer by a true copy thereof, is hereby admitted at Spokane, Washington, this 13th day of January, A. D. 1915.

FRANCIS A. GARRECHT,
Attorney for Plaintiff.

Demurrer. Filed in the U. S. District Court for the Eastern District of Washington, January 13, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[14]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation,
Defendant.

Stipulation [as to Certain Facts].

IT IS STIPULATED, that in consideration of the demurrer to each of the causes of action herein in this court or in any appellate proceedings, it may be accepted as a fact as to each of said causes of action

that each engine was equipped with a power driving-wheel brake and appliances for operating a train-brake system, and that in each train not less than 85% of the cars therein were equipped with power or train-brakes, which were used and operated by the engineer of the locomotive drawing such train, to control its speed in connection with the hand-brakes.

Dated this 14th day of June, 1915.

(Signed.) FRANCIS A. GARRECHT,
M. C. LIST,
Attorneys for Plaintiff
CHARLES S. ALBERT,
THOMAS BALMER,
Attorneys for Defendant.

[Endorsements]: Stipulation. Filed in the U. S. District Court for the Eastern District of Washington, July 9, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. [15]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant.

Opinion.

FRANCIS A. GARRECHT, U. S. Attorney.

M. C. LIST, Special Attorney.

CHARLES S. ALBERT, and THOMAS BALMER, for Defendant.

RUDKIN, District Judge:

This is an action to recover penalties for violations of the Safety Appliance Act of March 3, 1893 (27 Stat., 531), as amended by the act of April 1, 1896 (29 Stat., 85), as amended by the act of March 2, 1903 (32 Stat., 943). The complaint contains twelve counts or causes of action in all. The first count charges that the defendant, on the 9th day of July, 1914. ran a freight train engaged in the movement of interstate traffic from Cascade Tunnel to Merritt, in the State of Washington, and within the jurisdiction of this court, "when its speed was controlled by the brakemen using the common hand-brake for that purpose, and when said defendant did then and there require said brakemen to use the common hand-brake to control the speed of said train, and when the speed of said train was not controlled by the power or train-brakes used and operated by the engineer of the locomotive drawing said train, as required by Section 1 of the aforesaid act of March 2, 1893, as amended."

For the purpose of our present inquiry the remaining eleven counts are in all respects similar to the first. A demurrer for want of sufficient facts has been interposed by the defendant, accompanied by a stipulation: [16]

That in consideration of the demurrer to each of the causes of action herein in this court or in any appellate proceedings, it may be accepted as a fact as to each of said causes of action that each engine was equipped with a power driving-wheel brake and appliances for operating a train-brake system, and that in each train not less than 85% of the cars therein were equipped with power or train-brakes, which were used and operated by the engineer of the locomotive drawing such train, to control its speed in connection with the hand-brakes."

The sole question presented for decision therefore is, may a railroad company require or permit brakemen to use the common hand-brakes to control the speed of trains engaged in the movement of interstate traffic when the locomotives drawing the trains are equipped with power driving-wheel brakes and appliances for operating the train-brake system, and when not less than 85% of the cars in the train have their brakes used and operated by the engineers of the locomotives, as required by the order of the Interstate Commerce Commission of September 1, 1910, without incurring the penalty imposed by the act of 1893 and the amendments thereto.

Section 1 of the act of March 2, 1893, declares:

"That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel

brake and appliances for operating the train-brake system or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train-brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand-brakes for that purpose."

Section 2 of the act of March 2, 1903, provides:

"That whenever, as provided in said act, any train is operated with power or train-brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-brake cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the object of said act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train-brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission, shall be subject to the like penalty as failure to comply with any requirement of this section."

On the 6th day of June, 1910, the Interstate Commerce Commission promulgated the following order: [17]

> "It is ordered, that on and after September 1, 1910, on all railroads used in interstate commerce, whenever, as required by the Safety Appliance Act as amended March 2, 1903, any train is operated with power or train-brakes, not less than 85% of the cars of such train shall have their brakes used and operated by the engineer of the locomotive drawing such train, and all power-brake cars in each such train which are associated together with the 85 per cent shall have their brakes so used and operated."

Briefly stated, the railway company contends that having fully equipped its locomotives and cars as required by law and the order of the Interstate Commerce Commission, it has incurred no penalty, while the Government takes the broad position that the company must not only equip its locomotives and trains as required by the Interstate Commerce Commission, but must so equip them that the engineers on the locomotives drawing the trains can control their speed without requiring the brakemen to use the common hand-brakes for that purpose, and that the use of the hand-brakes for the purpose of controlling the speed of trains engaged in the movement of interstate traffic is *by implication* prohibited by the statute. These several contentions call for a construction of Section One of the act of 1893 and Section Two of the act of 1903. It occurs to me that these two sections are in irreconcilable conflict in so far as they relate to train-brake equipment and that the latter supersedes the former. Each section prescribes a standard to which the railroads of the country must

conform, but the two standards are radically different. The original act required the equipment of a sufficient number of cars with power or train-brakes, to control the speed of the train without the necessity of using hand-brakes for that purpose, while the amendment prescribes a fixed and definite standard. The standard prescribed by the original act was indefinite and uncertain at best. Under its provisions the sufficiency of the equipment must in every case be determined by a jury from expert testimony, and one jury might find that the equipment of 25% of the cars with power-brakes was sufficient, while under similar facts and conditions another jury might find that 50% was insufficient. To [18] obviate this uncertainty Congress, in my opinion, intended, by the amendment of 1903 to prescribe a fixed and definite standard, through the action of the Interstate Commerce Commission —a standdard binding alike on the railroads and on the courts. If I am correct in this conclusion, the sufficiency of the equipment is determined by the order of the Interstate Commerce Commission and so much of the original act as required a sufficient equipment has been repealed. But if I am in error in this, I am still of opinion that the complaint in this case does not charge a violation of either act, or of both acts combined. It does not charge that a sufficient number of cars in the trains were not equipped with power or train-brakes to enable the engineers on the locomotives drawing the trains to control their speed, without requiring brakemen to use the hand-brakes for that purpose, as provided in the original

act; nor does it charge a failure to comply with the requirements of the Interstate Commerce Commission, as provided by the amendment. It charges matters upon which the acts of Congress are wholly silent. The purpose of Congress in the enactment of these laws is so apparent that it is unnecessary to look to either reports of the Interstate Commerce Commission or of Congressional committees for light in their construction. The inquiry, however, is not the evil against which the legislature is directed, but the remedy prescribed by Congress to correct that evil. A mere reference to the statutes will show that the legislation is limited exclusively to railroad equipment, and penalties are only prescribed for failure to furnish or provide that equipment. Congress no doubt thought that by requiring automatic couplers and power-brakes it would obviate the necessity of men going between the cars to couple or uncouple them, or of going on top of trains to use the hand-brake; but in this Congress may have been mistaken. If mistaken, and the remedy is inadequate, relief must be had through further congressional action, not through judicial legislation. If prohibited at all the use of hand-brakes [19] is only prohibited by implication; and crimes are not defined or created in that way. As said by Chief Justice Marshall in United States v. Wiltberger, 5 Wheat. 76:

> "The rule that penal laws are to be construed strictly is perhaps not less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on

the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment. It is said that, notwithstanding this rule, the intention of the law-makers must govern in the construction of penal as well as other statutes. This is true, but this is not a new, independent rule which subverts the old. It is a modification of the ancient maxim, and amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases, which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a Court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its

provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated."

The case of Johnson v. Southern Pacific Co., 196 U. S. 1, does not conflict with these views. It was there held that statutes in derogation of the common law and penal statutes are not to be construed so strictly as to defeat the obvious intention of Congress as found in the language actually used according to its true and obvious meaning, and the Court quoted approvingly the following language of Mr. Justice Story in United States v. Winn, 3 Sumner, 209:

> "I agree to that rule in its true and sober sense; and that is, that penal statutes are not to be enlarged by implication, or extended to cases not obviously within their words and purport."

It is conceded in this case, and must be conceded, that if the use of hand-brakes to control the speed of trains is prohibited at all it is by implication only. As already stated, Congress has sought to obviate the necessity for going upon trains to use hand-brakes to control their speed by requiring the use of certain equipment and has imposed penalties for failure to furnish that equipment. [20] If it is now deemed necessary to go further and prohibit the railroads from requiring or permitting their employees to go upon trains to use the hand-brakes Congress must act. For the Court to impose pen-

alties for an act which Congress has not directly prohibited is judicial legislation which finds no warrant under our system of government. I am not unmindful of the fact that the Circuit Court of Appeals for the Fourth Circuit reached a different conclusion on a somewhat similar state of facts in the recent case of Virginia Railway Co. v. United States, decided May 4th, 1915, but the Court there conceded that the use of hand-brakes is prohibited *by implication only,* and I am unwilling to subscribe to the doctrine that a crime may be defined or worked out in that way. For aught that appears on the face of the complaint in this case the defendant has equipped its engines and trains with every safety appliance required by law, and for failure to do this, and for nothing else, has Congress prescribed penalties.

The demurrer is sustained and the action dismissed.

[Endorsements]: Opinion. Filed in the U. S. District Court for the Eastern District of Washington. July 8, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[21]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation,

Defendant.

Judgment.

This cause came on regularly to be heard before the Honorable Frank H. Rudkin, Judge, plaintiff appearing by Francis A. Garrecht, United States Attorney, and M. C. List, Special Attorney, and defendant appearing by Charles S. Albert and Thomas Balmer, attorneys for defendant, upon the demurrer by the defendant to the complaint and each and every cause of action in said complaint, setting forth that the same are not sufficient in law, and the defendant is not bound by the law of the land to answer the same, praying judgment that it be dismissed and discharged from the premises in said complaint specified, the grounds being set forth in said demurrer that neither the said complaint nor any cause of action set forth in said complaint stated sufficient facts or grounds constituting an offense against the United States, or any offense, nor stated facts sufficient to constitute a cause or causes of action against the de-

fendant, and that the facts stated therein did not state sufficient grounds constituting an offense against the United States or any offense, nor any cause of action under the act of Congress entitled, "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes and for other purposes," approved March 2d, 1893, as [22] amended April 1st, 1896, as amended March 2d, 1903, and as amended April 14th, 1910; and a stipulation of facts having been filed by the respective parties, and after argument of counsel and after consideration thereof and of said stipulation, the Court being duly advised in the premises, found for the defendant, sustaining said demurrer and dismissing said action;

It is therefore CONSIDERED and ADJUDGED that the said demurrer be, and the same is hereby, sustained to said complaint and to each and every cause of action therein, and that the said plaintiff, the United States of America, take nothing by this action, and that said action and each and every cause of action therein set forth be, and the same is hereby, dismissed, and said defendant is hereby discharged from the premises in said complaint contained.

Dated this 9th day of July, 1915.

By the Court:

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Judgment Filed in the U. S. District Court for the Eastern District of Washington, July 9, 1915. W. H. Hare, Clerk. By S. M. Russell, Deputy. **[23]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation,

Defendant.

Order Extending Time to File Bill of Exceptions.

Upon motion of Francis A. Garrecht, United States Attorney for the Eastern District of Washington, it is

ORDERED that the time in which plaintiff may serve and file its bill of exceptions in the above-entitled cause be, and the same is, extended to and including the 15th day of August, A. D. 1915.

Done in open court this 17th day of July, A. D. 1915.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Order Extending Time to File Bill of Exceptions. Filed July 17, 1915. W. H. Hare, Clerk. **[24]**

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 2075.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant.

Assignment of Errors.

Now comes the United States of America, by Francis A. Garrecht, United States Attorney for the Eastern District of Washington, and says that in the record and proceedings herein in the District Court of the United States for the Eastern District of Washington there is manifest error to the great prejudice of the said United States of America, to wit:

1. The said District Court erred in sustaining the demurrer of the said Great Northern Railway Company to the complaint filed herein by the said United States of America, and to each and every cause of action of said complaint, for the reason that it appears from said complaint that said defendant operated over its line of railroad the train mentioned in each and every cause of action of said complaint, when its speed was controlled by the brakemen using the common hand-brake for that purpose.

2. The said District Court erred in sustaining

the demurrer of the said Great Northern Railway Company to the complaint filed herein by the said United States of America, and to each and every cause of action of said complaint, for the reason that it appears from said complaint that said **[25]** defendant operated over its line of railroad the train mentioned in each and every cause of action of said complaint, and did then and there require the brakemen to use the common hand-brake to control the speed of said train.

3. That said District Court erred in sustaining the demurrer of the said Great Northern Railway Company to the complaint filed herein by the said United States of America, and to each and every cause of action of said complaint, for the reason that it appears from said complaint that said defendant operated over its lines of railroad the train mentioned in each and every cause of action of said complaint, when its speed was not controlled exclusively by the power or train-brakes used and operated by the engineer of the locomotive engine drawing said train.

4. The said District Court erred in sustaining said demurrer, for the reasons that the matters set forth in each and every cause of action of said complaint constitute a cause of action against said defendant.

5. The said District Court erred in rendering judgment in favor of the said Great Northern Railway Company and against the said United States of America upon each and every cause of action of

said complaint, for the reasons stated in the foregoing assignments of error.

WHEREFORE, by reason of the errors aforesaid, the said United States of America prays that the judgment rendered and entered in this action be avoided, annulled and reversed, and that the same be remanded with instructions to overrule the demurrer of said Great Northern Railway Company to said complaint and to each and every cause of action of the same.

(Signed) FRANCIS A. GARRECHT,
United States Attorney.

[Endorsements]: Assignment of Errors. Filed July 30, 1915. W. H. Hare, Clerk. **[26]**

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant.

Petition for Writ of Error.

The United States of America, plaintiff in the above-entitled cause, feeling itself aggrieved by the judgment entered herewith on the 9th day of July, 1915, sustaining the demurrer interposed to the complaint by the said defendant and dismissing the complaint on file herein, and in the record and proceed-

ings had in said cause, complains that manifest error was committed to the prejudice of the said United States, all of which is more fully alleged and set forth in the assignment of errors filed herein in aid of this petition for a Writ of Error.

WHEREFORE, said plaintiff, United States of America, prays that a Writ of Error be issued in this behalf out of the Circuit Court of Appeals of the United States in accordance with the provisions of the laws of the United States, for the correction of the errors complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the said United States Circuit Court of Appeals.

(Signed) FRANCIS A. GARRECHT,
United States Attorney.

[Endorsements]: Petition for Writ of Error. Filed July 30, 1915. W. H. Hare, Clerk. **[27]**

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant.

Order Allowing Writ of Error.

The plaintiff, United States of America, having this day filed its petition for a Writ of Error from

the judgment entered herein on the 9th day of July, A. D. 1915, sustaining the demurrer interposed by the defendant to the complaint herein and dismissing said action, to the Circuit Court of Appeals of the United States, together with an Assignment of Errors specifying the matters complained of, and of which it will complain. Now, therefore, it is

ORDERED that a Writ of Error be and hereby is allowed for the purpose of review in the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the judgment heretofore entered herein.

Done in open court this 30th day of July, A. D. 1915.

(Signed) FRANK H. RUDKIN,
Judge.

[Endorsements]: Order Allowing Writ of Error. Filed July 30, 1915. W. H. Hare, Clerk. [28]

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that this matter having

come on to be heard before the Honorable Frank H. Rudkin, United States District Judge; plaintiff appearing by Francis A. Garrecht, United States Attorney, and M. C. List, Special Assistant United States Attorney, and defendant appearing by Charles S. Albert, Esquire, and Thomas Balmer, Esquire, upon the demurrer of the defendant to the complaint filed in the above-entitled cause; and counsel having agreed to certain facts which were embodied in a stipulation and filed by the parties hereto, as follows, to wit:

"IT IS STIPULATED, that in consideration of the demurrer to each of the causes of action herein in this court or in any appellate proceedings, it may be accepted as a fact as to each of said causes of action that each engine was equipped with a power driving-wheel brake and appliances for operating a train-brake system, and that in each train not less than 85% of the cars therein were equipped with powed or train-brakes, which were used and operated by the [29] engineer of the locomotive drawing such train, to control its speed in connection with the hand-brakes.

Dated this 14th day of June, 1915.

FRANCIS A. GARRECHT,
M. C. LIST,
Attorneys for Plaintiff.
CHARLES S. ALBERT,
THOMAS BALMER,
Attorneys for Defendant.

And after argument of counsel, and consideration of the same and of said stipulation, and the matter

having been taken under advisement, the Court filed its judgment sustaining the demurrer herein and dismissing said action.

(Signed) FRANCIS A. GARRECHT,
United States Attorney.

[Endorsements]: Service of a copy of the within Bill of Exceptions hereby acknowledged this 30th day of July, A. D. 1915.

CHARLES S. ALBERT,
THOMAS BALMER,
Attorneys for Defendant.

Bill of Exceptions. Filed July 30, 1915.
(Signed) W. H. HARE,
Clerk. [30]

In the Circuit Court of Appeals of the United States, for the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant in Error.

Writ of Error [Copy].

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States to the Honorable, the Judges of the District Court of the United States for the Eastern District of Washington, Northern Division, Greeting:

Because of the record and proceedings as also in the rendition of the judgment sustaining the demur-

rer interposed by the defendant to the complaint and dismissing said action, in the case pending before you, or some of you, between the United States of America, Plaintiff, and Great Northern Railway Company, Defendant, a manifest error hath happened to the great damage of the plaintiff, United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment sustaining the demurrer to the complaint and dismissing said action be therein given, that then under your seal distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at the City of San Francisco, in the State of California, [31] on the 28 day of August next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS, The Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 30th day of July, in the year of our Lord, one thousand nine hundred and fifteen, and in the one hundred and fortieth year of the Idependence of the United States.

The above writ is hereby allowed.

(Signed) FRANK H. RUDKIN,
United States District Judge, for the Eastern District of Washington.

[Seal] Attest:

(Signed) W. H. HARE,
Clerk United States District Court, Eastern District of Washington.

[Endorsements]: Writ of Error. Filed July 30, 1915. W. H. Hare, Clerk. [32]

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant in Error.

Citation [Copy].

The President of the United States of America, to the Great Northern Railway Company, and to Charles S. Albert, Esquire, Your Attorney, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this Citation, pursuant to a Writ of Error filed in the office of the Clerk of the District Court of the United States for the Eastern District of Washing-

ton, wherein the United States of America is Plaintiff in Error, and you, the said Great Northern Railway Company, is Defendant in Error, to show cause, if any there be, why the judgment rendered against the plaintiff in error sustaining defendant's demurrer to the complaint and dismissing said action, as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, The Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 30th day of July, 1915, and in the One Hundred and Fortieth year of the Independence of the United States.

FRANK H. RUDKIN,
United States District Judge.

[Seal] Attest: W. H. HARE,
Clerk United States District Court, Eastern District of Washington. **[33]**

[Endorsements]: Service of a Copy of the Within Citation hereby acknowledged this 30th day of July, A. D. 1915.

CHARLES S. ALBERT,
THOMAS BALMER,
Attorneys for Defendant in Error.

Citation. Filed July 30, 1915. W. H. Hare, Clerk. **[34]**

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,

Defendant.

Praecipe for Record.

To the Clerk of the United States District Court for the Eastern District of Washington, Northern Division:

YOU ARE HEREBY REQUESTED in making up your return to the Citation on appeal herein, to include therein the following:

Complaint;
Demurrer to Complaint;
Stipulation of Facts;
Opinion of Court;
Judgment;
Assignment of Errors;
Petition for Writ of Error;
Order Allowing Writ;
Bill of Exceptions;
Writ of Error;
Citation;
Praecipe;
Order Extending Time to File Bill of Exceptions,

which include all of the papers, records and other pleadings necessary to the hearing of the Writ of Error in the United States Circuit Court of Appeals, and that no other records or pleadings than those above mentioned need be included by the clerk of said court in making up his return to said Citation.

Dated this 30th day of July, A. D., 1915.

(Signed) FRANCIS A. GARRECHT,
United States Attorney.

[Endorsements]: Service of a copy of the within Praecipe for Transcript of Record is hereby acknowledged this 30th day of July, A. D. 1915.

CHARLES S. ALBERT,
THOMAS BALMER,
Attorneys for Defendant.

Praecipe for Transcript of Record. Filed July 30, 1915. W. H. Hare, Clerk. [35]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 2075.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY,
a Corporation.
Defendant.

United States of America,
Eastern District of Washington,—ss.

I, W. H. HARE, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages are a full, true, correct and complete copy of the record, papers and other proceedings in the foregoing entitled cause as called for by the plaintiff and plaintiff in error in its praecipe as the same remains of record and on file in the office of the clerk of said District Court, and that the same constitute the record on Writ of Error from the judgment of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California, which Writ of Error was lodged and filed in my office on July 30, 1915.

I further certify that I hereto attach and herewith transmit the original Writ of Error and the original Citation issued in this cause.

I further certify that the fees of the clerk of this court for preparing and certifying to the foregoing typewritten record amounts to the sum of $14.45, which sum will be included in my quarterly account as clerk against the United States, plaintiff and plaintiff in error, for the quarter ending September 30, 1915. [36]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court

at Spokane, in said District, this 7th day of August, 1915.

[Seal] W. H. HARE,
Clerk. [37]

In the Circuit Court of Appeals of the United States, for the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant in Error.

Writ of Error [Original].

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States to the Honorable, the Judges of the District Court of the United States for the Eastern District of Washington, Northern Division, Greeting:

Because of the record and proceedings as also in the rendition of the judgment sustaining the demurrer interposed by the defendant to the complaint and dismissing said action, in the case pending before you, or some of you, between the United States of America, Plaintiff, and Great Northern Railway Company, Defendant, a manifest error hath happened to the great damage of the plaintiff, United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to

the parties aforesaid in this behalf, do command you, if judgment sustaining the demurrer to the complaint and dismissing said action be therein given, that then under your seal distinctly and openly, you sent the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at the City of San Francisco, in the State of California, [38] on the 28 day of August next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS, The Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 30th day of July, in the year of our Lord, one thousand nine hundred and fifteen, and in the one hundred and fortieth year of the Independence of the United States.

The above writ is hereby allowed.

FRANK H. RUDKIN,
United States District Judge, for the Eastern District of Washington.

[Seal] Attest: W. H. HARE,
Clerk United States District Court, Eastern District of Washington. [39]

[Endorsed]: No. 2075. In the Circuit Court of Appeals. United States of America, Plaintiff in Error, vs. Great Northern Railway Company, De-

fendant in Error. Writ of Error. Filed July 30, 1915. W. H. Hare, Clerk. By ————, Deputy. No. 2036. Filed Aug. 10, 1915. Frank D. Monckton, Clerk U. S. Circuit Court of Appeals, for the Ninth Circuit. By ————————, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant in Error.

Citation [Original].

The President of the United States of America, to the Great Northern Railway Company, and to Charles S. Albert, Esquire, Your Attorney, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this Citation, pursuant to a Writ of Error filed in the office of the Clerk of the District Court of the United States for the Eastern District of Washington, wherein the United States of America is Plaintiff in Error, and you, the said Great Northern Railway Company, is Defendant in Error, to show cause, if any there be, why the judgment rendered against the plaintiff in error sustaining defendant's demur-

rer to the complaint and dismissing said action, as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, The Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 30th day of July, 1915, and in the One Hundred and Fortieth year of the Independence of the United States.

FRANK H. RUDKIN,
United States District Judge.

[Seal] Attest: W. H. HARE,
Clerk United States District Court, Eastern District of Washington.

[Endorsed]: No. 2075. In the Circuit Court of Appeals. United States of America, Plaintiff in Error, vs. Great Northern Railway Company, Defendant in Error. Citation. Filed July 30, 1915. W. H. Hare, Clerk. By ————, Deputy. No. 2636. Filed Aug. 10, 1915. Frank D. Monckton, Clerk U. S. Circuit Court of Appeals, for the Ninth Circuit. By ————, Deputy Clerk.

Service of a copy of the within citation hereby acknowledged this 30th day of July, A. D. 1915.

CHARLES S. ALBERT,
THOMAS BALMER,
Attorneys for Defendant in Error.

[Endorsed]: No. 2636. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff in Error, vs. Great Northern Railway Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Filed August 10, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.